



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)
)
) ISCR Case No. 17-00281
)
Applicant for Security Clearance)

Appearances

For Government: Alison Marie, Esq., Department Counsel
For Applicant: *Pro se*

11/08/2017

Decision

KILMARTIN, Robert J., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline F, financial considerations. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

On February 27, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline F, financial considerations. Applicant timely answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on June 28, 2017. Applicant received the FORM on July 7, 2017, and had 30 days to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the Government’s evidence, and he provided no response to the FORM. Government’s evidence, identified as Items 1 through 14, is admitted into evidence without objection. The case was assigned to me on October 23, 2017.

Findings of Fact¹

Applicant is 50 years old this month. He graduated from high school in 1986. Applicant has been employed as a test-technician IV by a federal contractor since September 1996. He served on active duty in the U.S. Navy from 1988 to 1992 and received an honorable discharge. He had a previous clearance while he was on active duty. He was married in 1995 and divorced in 2015. He reports two children, born in 2006 and 2010. Applicant reports in section 26 of his May 2016 Questionnaire for National Security Positions or security clearance application (SCA)² that he had filed Chapter 13 bankruptcy petitions in July 2013, and in July 2015. The latter Chapter 13 plan included over \$30,000 in delinquent student loans that were deferred for five years. The Chapter 13 repayment plan is scheduled to be completed in 2020 when the bankruptcy will be discharged.

In addition to the bankruptcies, Applicant reported delinquent debts in section 26 of his SCA including the student loans and a credit-card debt, which was included in his Chapter 13 bankruptcy petition filed on July 15, 2013. The 2013 bankruptcy plan included approximately \$107,000 in debt. It required Applicant to pay \$672 a month to the bankruptcy trustee for five years. Applicant made these payments from July 2013 to June 2015. However, when his divorce became final in 2015, the court ordered his child-support payments to increase from \$700 per month to \$1,500 per month, in addition to the \$672 each month to the trustee. Applicant could not keep up with these payments and he filed a motion for a voluntary dismissal of his bankruptcy petition in June 2015. His motion was granted and Applicant filed another Chapter 13 bankruptcy petition one month later in July 2015. His payments to the trustee were reduced to \$452 per month under the new plan.

Although Applicant did not disclose it, he filed an earlier Chapter 13 bankruptcy petition on October 1, 2003.³ That was dismissed on October 24, 2007 because Applicant failed to make all payments as required to the bankruptcy trustee. His recent chapter 13 plan consolidated approximately \$94,689 of Applicant's unsecured debts including federal income taxes⁴ owed from 2007 – 2012, utilities, medical accounts, credit cards and personal loans. Although, the delinquent federal income taxes are not alleged in the SOR, they will be considered as part of my whole-person analysis of Applicant. The bankruptcy also included the two student loans and other delinquent debts alleged in the SOR. Recently, the trustee filed yet another motion to dismiss for [applicant's] failure to make payments on April 11, 2017. The bankruptcy court's ruling

¹ Unless stated otherwise, the source of the information in this section is Applicant's May 12, 2016 Security Clearance Application (SCA) (Item 5) and the summary of his personal subject interview conducted on August 8, 2016. (Item 14)

² Item 5.

³ Item 8.

⁴ Item 11, Schedule E.

was reserved.⁵ Although, Applicant made 18 consecutive payments to the trustee under the repayment plan, it is unclear whether he will be able to cure the default and continue to make payments pursuant to his obligations under the bankruptcy plan.

Applicant attributes his financial problems to the strain following his January 2013 marital separation.⁶ He has admitted all of the SOR allegations, including the three bankruptcy petitions, in his March 29, 2017 answer. The alleged delinquent debts total over \$68,000. The bulk of his delinquent debts are from the two student loans totaling \$63,000. Other than his bankruptcy petitions, Applicant has taken no actions to resolve these financial issues. He did not provide any explanations or substantiating documentation with his answer, and he did not respond to the FORM.

Policies

This action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines promulgated in Security Executive Agent Directive 4 (SEAD 4), effective within the DOD on June 8, 2017.⁷

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the adjudicative process is an examination of a sufficient period and a careful weighing of a number of variables of an individual's life to make an affirmative determination that the individual is an acceptable security risk. This is known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security

⁵ Items 10 and 13.

⁶ Items 5 and 14.

⁷ Although I have decided this case under the adjudicative guidelines (AG) effective June 8, 2017, I also considered the case under the former AG effective on September 1, 2006, and my decision would be the same under either AG.

eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and othisevidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rathisthan actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline F, Financial Considerations

The security concern relating to financial considerations is set out in AG ¶18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, othissues of personnel security concern such as excessive gambling, mental health conditions, substance abuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that an individual might knowingly compromise classified information in order to raise money. It encompasses concerns about an individual's self-control, judgment, and other qualities essential to protecting classified information. An individual who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified information.

AG ¶ 19 provides conditions that could raise security concerns. The following apply here:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations.

Applicant's delinquent debts alleged in the SOR are confirmed by his credit reports, answer to the SOR, and his clearance interview of August 2016. The Government produced substantial evidence to support the disqualifying conditions in AG ¶¶ 19(a), 19(b), and 19(c), thereby shifting the burden to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the facts.⁸ Applicant has not met that burden. None of the delinquent debts have been adequately addressed with corroborating documentation.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 20 are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control . . . , and the individual acted responsibly under the circumstances;
- (c) the individual has received, or is receiving financial counseling for the problem from a legitimate and credible source, such as non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control;
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

⁸ Directive ¶ E3.1.15. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep 22, 2005) (An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government).

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Applicant endured a separation and divorce. Arguably, these conditions were beyond his control. He has made some efforts to resolve his alleged delinquent debts by including them in his latest bankruptcy plan. However, he is now in default in making payments as agreed to the bankruptcy trustee, for the third time. His efforts are disingenuous. He has produced no documentation to show that he is now in compliance with his 2015 bankruptcy plan, either with his answer or in response to the FORM. Applicant had financial problems going back to at least 2003 when he filed his first bankruptcy petition. He owes federal income taxes going back to 2007. He did not separate from his wife until 2013. He produced no evidence to show efforts to resolve his delinquent debts prior to filing bankruptcy petitions in 2013 and 2015. His financial issues are ongoing and recent. He has not demonstrated that he acted responsibly under the circumstances. Applicant has the burden to provide sufficient evidence to show that his financial problems are under control, and that his debts were incurred under circumstances making them unlikely to recur. He did not meet his burden of proof and persuasion. None of the mitigating conditions fully apply.

In the FORM, Department Counsel informed Applicant that it was necessary for him to provide corroborating or supporting documentation of resolution of the debts in the SOR. (FORM at 9) Aside from Applicant's half-hearted bankruptcy plans, there is no documentary evidence that Applicant paid, arranged to pay, settled, compromised, or otherwise resolved the SOR debts. He did not describe financial counseling or provide his budget. The record lacks corroborating or substantiating documentation and detailed explanations of the causes for his financial problems and other mitigating information. The FORM informed Applicant that he had 30 days from the receipt of the FORM "in which to submit a documentary response setting forth objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. If you do not file any objections or submit any additional information . . . your case will be assigned to an Administrative Judge for a determination based solely" on the evidence set forth in this FORM. (FORM at 9)

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to

which participation is voluntary; (6) the presence or absence of rehabilitation and permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline F in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines. Applicant served honorably in the armed forces during time of war. He has maintained employment since 1996. However, most importantly, Applicant has not met his burden of production.

Applicant's finances remain a security concern. He is delinquent on paying federal income taxes and other debts. There is insufficient evidence to conclude that Applicant's financial problems are under control. The record evidence leaves me with serious questions and doubts as to Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising under Guideline F, financial considerations.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline F:	AGAINST APPLICANT
Subparagraphs 1.a to 1.j:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Robert J. Kilmartin
Administrative Judge